

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
January 13, 2010

**LEGEND:**

X =

Date 1 =

Date 2 =

Date 3 =

a =

Dear :

This letter responds to a letter dated August 18, 2009, and subsequent correspondence submitted on behalf of X, requesting a ruling under § 1362(g) of the Internal Revenue Code.

X was incorporated on Date 1. Prior to Date 2, X was taxed as an S corporation. On Date 2, X created an employee stock ownership plan (ESOP) and converted its existing common stock into two classes of stock. X's shareholders sold a% of their stock to the ESOP. X's S corporation election was automatically terminated on Date 2 under 1362(d) when X created a second class of stock. X's shareholders did not make an election under § 1042.

Prior to Date 3, X converted its two classes of stock into one class of stock, common stock. Thus, immediately prior to Date 3, X had one class of stock outstanding. X is requesting permission to reelect to be an S corporation effective Date 3, prior to the termination of the five-year waiting period imposed by § 1362(g).

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) is not eligible to make an election under

section 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

Based on the information submitted and the representations made, X is granted permission to elect to be an S corporation effective Date 3.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

*David R. Haglund*

David R. Haglund  
Branch Chief, Branch 1  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: